

AMENDED IN SENATE MAY 31, 2016

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SENATE BILL

No. 823

Introduced by Senator Block

January 6, 2016

An act to ~~amend Section 1203.49 of~~ *add Section 236.13 to* the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

SB 823, as amended, Block. Criminal procedure: human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law provides that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, and would authorize trafficking. Existing law authorizes a court to issue an order that (1) sets forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the Department of Justice that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

Existing law authorizes a person who was adjudicated a ward of the juvenile court for solicitation or prostitution to, upon reaching 18 years of age, petition the court to have his or her record sealed, as specified.

This bill would ~~instead create a presumption that if a defendant or establish a separate petition process for a person who has been arrested, convicted, arrested for, convicted of, or adjudicated a ward of the~~

~~juvenile court for committing any nonviolent offense for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking shows evidence trafficking. The bill would provide that if the petitioner establishes that the arrest, conviction, or adjudication was the direct result of of, or in clear connection with with, a human trafficking scheme of which he or she was a victim, the defendant or person has met the requirements for relief under these provisions. petitioner would be entitled to a presumption that the requirements for relief under the petition process have been met. The bill would authorize the court to vacate the conviction or adjudication and issue an order that provides the relief described above and also provides for the sealing and destruction of the petitioner's arrest and court records, as specified.~~ The bill would require that the petition be made within a reasonable time after the person has ceased to be a victim of human trafficking, or within a reasonable time after the person has sought services for being a victim of human trafficking, whichever is later. ~~The bill would additionally require the order of relief to include sealing related arrest and court records.~~ The bill would provide that official documentation, as defined, of a petitioner's status as a victim of human trafficking establishes a presumption that his or her participation in the offense was the result of the petitioner's status as a victim of human trafficking. The bill would provide that a petitioner or his or her attorney is not required to appear in person at a hearing for the relief described above, and may appear via alternate specified methods. The bill would prohibit the disclosure of the full name of a petitioner in the record of a proceeding related to his or her petition that is accessible by the public. The bill would authorize a petitioner who has obtained the relief described above to lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to that relief. *By increasing the number of records local agencies would be required to seal and destroy, this bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1203.49 of the Penal Code is amended~~
2 ~~to read:~~
3 ~~1203.49. (a) If a defendant has been arrested for or convicted~~
4 ~~of any nonviolent offense committed while he or she was a victim~~
5 ~~of human trafficking, including, but not limited to, solicitation or~~
6 ~~prostitution, as described in subdivision (b) of Section 647, the~~
7 ~~defendant may petition the court for relief under this section. If~~
8 ~~the petitioner can establish that the arrest or conviction was the~~
9 ~~direct result of or in clear connection with a human trafficking~~
10 ~~scheme of which he or she was a victim, the petitioner shall be~~
11 ~~entitled to a presumption that the requirements for relief have been~~
12 ~~met, and the court may issue an order that does all of the following:~~
13 ~~(1) Sets forth a finding that the petitioner was a victim of human~~
14 ~~trafficking when he or she committed the offense.~~
15 ~~(2) Sets aside the verdict of guilty and dismisses the accusation~~
16 ~~or information against the petitioner.~~
17 ~~(3) Seals the arrest and court records relating to the arrest and~~
18 ~~conviction.~~
19 ~~(4) Notifies the Department of Justice that the petitioner was a~~
20 ~~victim of human trafficking when he or she committed the crime~~
21 ~~and the relief that has been ordered.~~
22 ~~(b) A person who was arrested or found to be a person described~~
23 ~~in Section 602 of the Welfare and Institutions Code because he or~~
24 ~~she committed a nonviolent offense while he or she was a victim~~
25 ~~of human trafficking, including, but not limited to, solicitation or~~
26 ~~prostitution, as described in subdivision (b) of Section 647, may~~
27 ~~petition the court for relief under this section. If the petitioner can~~
28 ~~establish that the arrest or adjudication was the direct result of or~~
29 ~~in clear connection with a human trafficking scheme of which he~~

1 or she was a victim, the petitioner shall be entitled to a presumption
2 that the requirements for relief have been met, and the court may
3 issue an order that does all of the following:

4 (1) ~~Sets forth a finding that the petitioner was a victim of human~~
5 ~~trafficking when he or she committed the offense.~~

6 (2) ~~Sets aside the verdict of guilty and dismisses the accusation~~
7 ~~or information against the petitioner.~~

8 (3) ~~Seals the arrest and court records relating to the arrest and~~
9 ~~adjudication.~~

10 (4) ~~Notifies the Department of Justice that the petitioner was a~~
11 ~~victim of human trafficking when he or she committed the crime~~
12 ~~and the relief that has been ordered.~~

13 (e) ~~An application pursuant to this section shall be made and~~
14 ~~heard within a reasonable time after the person has ceased to be a~~
15 ~~victim of human trafficking, or within a reasonable time after the~~
16 ~~person has sought services for being a victim of human trafficking,~~
17 ~~whichever occurs later, subject to reasonable concerns for the~~
18 ~~safety of the person, family members of the person, or other victims~~
19 ~~of human trafficking that may be jeopardized by the bringing of~~
20 ~~the application, or for other reasons consistent with the purpose~~
21 ~~of this section.~~

22 (d) ~~For the purposes of this section, official documentation of~~
23 ~~a petitioner's status as a victim of human trafficking shall establish~~
24 ~~a presumption that his or her participation in the offense was the~~
25 ~~result of his or her status as a victim of human trafficking. For the~~
26 ~~purposes of this subdivision, "official documentation" means any~~
27 ~~documentation issued by a federal, state, or local agency that tends~~
28 ~~to show the petitioner's status as a victim of human trafficking.~~
29 ~~Official documentation shall not be required for the issuance of~~
30 ~~an order described in subdivision (a).~~

31 (e) ~~A petitioner, or his or her attorney, is not required to appear~~
32 ~~in person at a hearing for relief pursuant to this section, and may~~
33 ~~appear telephonically, via videoconference, or by other electronic~~
34 ~~means established by the court.~~

35 (f) ~~Notwithstanding any other law, a petitioner who has obtained~~
36 ~~an order pursuant to this section may lawfully deny or refuse to~~
37 ~~acknowledge an arrest, conviction, or adjudication that is set aside~~
38 ~~pursuant to the order.~~

1 ~~(g) Notwithstanding any other law, the records of the arrest,~~
2 ~~conviction, or adjudication shall not be distributed to any state~~
3 ~~licensing board.~~

4 ~~(h) The record of a proceeding related to a petition pursuant to~~
5 ~~this section that is accessible by the public shall not disclose the~~
6 ~~petitioner's full name.~~

7 ~~(i) A court that grants relief pursuant to this section may take~~
8 ~~additional action as appropriate under the circumstances to carry~~
9 ~~out the purposes of this section.~~

10 ~~(j) If the court denies the petition for relief because the evidence~~
11 ~~is insufficient to establish that the arrest, conviction, or adjudication~~
12 ~~was the result of the petitioner's status as a victim of human~~
13 ~~trafficking, the denial shall be without prejudice. The court shall~~
14 ~~state the reasons for its denial in writing and, if those reasons are~~
15 ~~based on curable deficiencies in the petition, allow the petitioner~~
16 ~~a reasonable time period to cure the deficiencies upon which the~~
17 ~~court has based the denial.~~

18 ~~(k) For the purposes of this section, "nonviolent offense" means~~
19 ~~any offense except those listed in subdivision (c) of Section 667.5~~
20 ~~of the Penal Code.~~

21 *SECTION 1. Section 236.13 is added to the Penal Code, to*
22 *read:*

23 *236.13. (a) If a person was arrested for or convicted of any*
24 *nonviolent offense committed while he or she was a victim of*
25 *human trafficking, including, but not limited to, prostitution as*
26 *described in subdivision (b) of Section 647, the person may petition*
27 *the court for relief under this section. If the petitioner establishes*
28 *that the arrest or conviction was the direct result of, or in clear*
29 *connection with, a human trafficking scheme of which he or she*
30 *was a victim, the petitioner is entitled to a presumption that the*
31 *requirements for relief have been met, and the court may vacate*
32 *the conviction and issue an order that does all of the following:*

33 *(1) Sets forth a finding that the petitioner was a victim of human*
34 *trafficking when he or she committed the offense.*

35 *(2) Sets aside the verdict of guilty and dismisses the accusation*
36 *or information against the petitioner.*

37 *(3) Notifies the Department of Justice that the petitioner was a*
38 *victim of human trafficking when he or she committed the crime*
39 *and of the relief that has been ordered.*

1 (b) A person who was arrested as, or found to be, a person
2 described in Section 602 of the Welfare and Institutions Code
3 because he or she committed a nonviolent offense while he or she
4 was a victim of human trafficking, including, but not limited to,
5 prostitution, as described in subdivision (b) of Section 647, may
6 petition the court for relief under this section. If the petitioner
7 establishes that the arrest or adjudication was the direct result of,
8 or in clear connection with, a human trafficking scheme of which
9 he or she was a victim, the petitioner is entitled to a presumption
10 that the requirements for relief have been met, and the court may
11 vacate the adjudication and issue an order that does all of the
12 following:

13 (1) Sets forth a finding that the petitioner was a victim of human
14 trafficking when he or she committed the offense.

15 (2) Sets aside the verdict of guilty and dismisses the accusation
16 or information against the petitioner.

17 (3) Notifies the Department of Justice that the petitioner was a
18 victim of human trafficking when he or she committed the crime
19 and of the relief that has been ordered.

20 (c) If the court issues an order as described in subdivision (a)
21 or (b), the court shall also order the law enforcement agency
22 having jurisdiction over the offense, the Department of Justice,
23 and any law enforcement agency that arrested the petitioner or
24 participated in the arrest of the petitioner to seal their records of
25 the arrest and the court order to seal and destroy the records for
26 three years from the date of the arrest, or within one year after
27 the court order is granted, whichever occurs later, and thereafter
28 to destroy their records of the arrest and the court order to seal
29 and destroy those records. The court shall give to the petitioner a
30 copy of any court order concerning the destruction of the arrest
31 records.

32 (d) A petition pursuant to this section shall be made and heard
33 within a reasonable time after the person has ceased to be a victim
34 of human trafficking, or within a reasonable time after the
35 petitioner has sought services for being a victim of human
36 trafficking, whichever occurs later, subject to reasonable concerns
37 for the safety of the petitioner, family members of the petitioner,
38 or other victims of human trafficking who may be jeopardized by
39 the bringing of the application or for other reasons consistent with
40 the purposes of this section.

1 (e) For the purposes of this section, official documentation of
2 a petitioner's status as a victim of human trafficking shall establish
3 a presumption that his or her participation in the offense was the
4 result of his or her status as a victim of human trafficking. For the
5 purposes of this subdivision, "official documentation" means any
6 documentation issued by a federal, state, or local agency that tends
7 to show the petitioner's status as a victim of human trafficking.
8 Official documentation shall not be required for the issuance of
9 an order described in subdivision (a).

10 (f) A petitioner, or his or her attorney, is not required to appear
11 in person at a hearing for relief pursuant to this section, and may
12 appear telephonically, via videoconference, or by other electronic
13 means established by the court.

14 (g) Notwithstanding any other law, a petitioner who has
15 obtained an order pursuant to this section may lawfully deny or
16 refuse to acknowledge an arrest, conviction, or adjudication that
17 is set aside pursuant to the order.

18 (h) Notwithstanding any other law, the records of the arrest,
19 conviction, or adjudication shall not be distributed to any state
20 licensing board.

21 (i) The record of a proceeding related to a petition pursuant to
22 this section that is accessible by the public shall not disclose the
23 petitioner's full name.

24 (j) A court that grants relief pursuant to this section may take
25 additional action as appropriate under the circumstances to carry
26 out the purposes of this section.

27 (k) If the court denies the petition for relief because the evidence
28 is insufficient to establish that the arrest, conviction, or
29 adjudication was the direct result of, or in clear connection with,
30 a human trafficking scheme of which the petitioner was a victim,
31 the denial shall be without prejudice. The court shall state the
32 reasons for its denial in writing and, if those reasons are based
33 on curable deficiencies in the petition, allow the petitioner a
34 reasonable time period to cure the deficiencies upon which the
35 court has based the denial.

36 (l) For the purposes of this section, the following terms apply:

37 (1) "Nonviolent offense" means any offense not listed in
38 subdivision (c) of Section 667.5.

39 (2) "Vacate" means that the arrest and any adjudications or
40 convictions suffered by the petitioner are deemed not to have

1 occurred and that all records in the case are sealed and destroyed
2 pursuant to this section. The court shall provide the petitioner with
3 a copy of the orders described in subdivisions (a), (b), and (c), as
4 applicable, and inform the petitioner that he or she may thereafter
5 state that he or she was not arrested for the charge, or adjudicated
6 or convicted of the charge, that was vacated.

7 (3) “Victim of human trafficking” means the victim of a crime
8 described in subdivisions (a), (b), and (c) of Section 236.1.

9 SEC. 2. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

14 ~~SEC. 2.~~

15 SEC. 3. The Legislature finds and declares that Section 1 of
16 this act, which ~~amends~~ adds Section ~~1203.49~~ of 236.13 to the Penal
17 Code, imposes a limitation on the public’s right of access to the
18 meetings of public bodies or the writings of public officials and
19 agencies within the meaning of Section 3 of Article I of the
20 California Constitution. Pursuant to that constitutional provision,
21 the Legislature makes the following findings to demonstrate the
22 interest protected by this limitation and the need for protecting
23 that interest:

24 In order to protect the privacy of victims of human trafficking
25 and to improve their opportunities for recovery, it is necessary that
26 this act limit the public’s right of access to the full name of a
27 petitioner who seeks relief from an arrest or conviction for an
28 offense in which the petitioner participated as a result of his or her
29 status as a victim of human trafficking.